

California Energy Commission  
Docket Unit, MS-4  
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Re: Docket No. 03-RPS-1078 and Docket No. 02-REN-1038

California Energy Commission:

CAlifornians for Renewable Energy, Inc. (CARE) respectfully provides the following comments on the Renewable Portfolio Standard (RPS) Guidebooks that you will be considering at the April 21, 2004 meeting. CAlifornians for Renewable Energy, Inc. (CARE) is a non-profit corporation that works to educate and encourage the use of alternative forms of renewable energy to avoid dependence on declining supplies of fossil fuels, and the harmful air emissions their use entails. The Renewable Portfolio Standard (RPS) Guidebooks that you will be considering at the April 21, 2004 meeting provides applicants for renewable energy projects the eligibility criteria necessary to determine how to receive funding from the California Energy Commission.

As renewable energy advocates we have all learned that all purported renewable energy is not equal. And because some rather severe environmental impacts are associated with certain forms of so-called renewable energy these forms of generation are really just something else. For example geothermal energy is just a type of mining operation and combustion of garbage in bio-mass produces more tons annually of fine particulates and NOx for 1 MWh of power than a 45 MWh LM6000 "peaker" gas fired combustion turbine does. Additionally, the renewable sources, like Wind turbines, can cause severe impacts on avian mortality depending on location and environmental setting that must be analyze under the California Environmental Quality Act (CEQA), or as a necessary component of the Warren-Alquist Act, the statutory scheme the CEC operates under.

CEQA provides that a proposed project may have a significant effect on the environment when the possible effects on the environment are individually limited but “cumulatively considerable.” (Pub. Res. Code § 21083(b); 13 Cal. Code Regs. § 15065. “‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (14 Cal. Code Regs. § 15065.) In addition to analyzing the direct impacts of a project, the CEQA Lead Agency must also consider a project's potentially significant cumulative impacts.

The CEC demonstrated through its past actions, particularly through the award of conditional subsidies to Calpine, approving funding for projects that have a significant impact on sacred sites and cultural resources that are of vital importance to the Native American way of life and worship, for example Calpine's projects funded by CEC in the sacred Medicine Lake Highlands. Previously, the CEC deferred key decisions on the RPS issue because of the potential for irreversible impacts to this low-income community of color, and to consider these Native American cultural resources and the importance of their sacred lands. The decisions of how the RPS will be implemented will determine *which* projects will be certified, *which* projects will receive substantial financial support, and thus *which* energy projects receive eligibility and funding in order to meet the RPS, and therefore a more strict environmental compliance criteria is required. We are concerned that Native American cultural, environmental justice, and even environmental impact concerns could be brushed aside in an effort to achieve an RPS standard at all costs. Since sufficient projects are being proposed, the CEC will have ample opportunity for discretionary decisions.

The Guidebooks fails to address these concerns. In order to address these concerns the affected low-income, native peoples, and peoples of color need to have meaningful and informed public participation in the eligibility process of determining whether projects qualify for certification and for funding

under RPS and Supplemental Energy Payments (SEPs) for each project or the criteria must be modified to perform analysis of environmental and socioeconomic impacts with the results weighed in the balance with the reliability benefits of the proposed energy project in deciding on award recipients. A Criteria needs to be included that will preclude projects shown—through applicable NEPA and CEQA review, the National Historic Preservation Act (NHPA) Section 106 process, or other statute—to have unmitigable impacts on the environment, significant cultural resources, sacred lands, as well as environmental justice impacts that cannot be mitigated.

Recent statutory law has invigorated CEQA's role in ensuring **"the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies" (i.e., environmental justice).**" (Emphasis added; see SB 115, Solis; Stats. 99, ch. 690, Gov. Code § 65040.12 and Pub. Res. Code §§ 72000-720001.)

In conjunction with the regulatory provisions of the federal Clean Air Act and Division 26 of the Health and Safety Code,<sup>1</sup> CEQA provides an ideal mechanism for ensuring that Environmental Justice will be addressed in all activities and projects that may have a significant effect on the environment.

CEQA requires that environmental documents (*i.e.*, an environmental impact report (EIR) or a negative declaration) be prepared whenever a public agency proposes to undertake a discretionary activity (which is defined extremely broadly as the "whole of an action" being engaged in) that may have a significant effect on the environment. (See Pub. Res. Code §§ 21002.1, 21061, 21064, and 21080.1; see *also* 14 Cal. Code Regs. §15002.)

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<sup>1</sup> 42 U.S.C. § 7401 *et seq.* (Public Law 88-206, 77 Stat. 392, December 17, 1963, as last amended by the Clean Air Act Amendments of 1990, P. L. 101-549, November 15, 1990); Health & Saf. Code § section 39000 *et seq.*

In enacting CEQA, the Legislature expressly declared a number of important policies with which activities and documentation must be consistent, and which must be complied with and enforced, including:

"It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, ***shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.***" (Pub. Res. Code § 21000(g) (emphasis added).)

It is California policy to "[d]evelop and maintain a high-quality environment now and in the future, and ***take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.***" (Pub. Res. Code § 21001(a) (emphasis added).)

It is the policy of this state to require that public agencies "[t]ake all action necessary to ***provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.***" (Pub. Res. Code § 21001(b) (emphasis added).)

State policy calls for ensuring "that the long-term protection of the environment, consistent with ***the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.***" (Pub. Res. Code § 21001(d) (emphasis added).)

State policy requires "governmental agencies at all levels to ***develop standards and procedures necessary to protect environmental quality***" (Pub. Res. Code § 21001(f) (emphasis added).)

California policy requires "governmental agencies at all levels to ***consider qualitative factors as well as economic and technical factors and long-term benefits and costs ...***" (Pub. Res. Code § 21001(g) (emphasis added).)

"The interrelationship of policies and practices in the management of natural resources and waste disposal requires ***systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.***" (Pub. Res. Code § 21000(f).)

"Every citizen has a responsibility to contribute to the preservation and enhancement of the environment." (Pub. Res. Code § 21000(e).)

Title VI of the Civil Rights Act of 1964 requires CEC, in coordination with the California Environmental Protection Agency, Department of Toxic Substances Control, to identify and address any disproportionately high human health, socioeconomic, or environmental impacts of their programs, policies, and actions on minority or low-income populations. CEQA is primarily a public disclosure statutory scheme allowing the affected community to be informed and members of the public to voice their opinion, and to have input, about projects that may affect their environment. CEQA requires a review of the environmental impacts of overall activities ("the whole of an action" -- 14 Cal. Code Regs. § 15378(a)) defined as "projects." (Pub. Res. Code § 21065.) This strong, broad right of public participation under CEQA has a political component (i.e., CEQA allows the compilation of a record concerning the approval of development projects that can be used by the public to vote environmentally insensitive decision makers out of office come election day), the violation or deprivation of which has constitutional ramifications on an affected community as well as the public at large.

The recent enactment of Public Resources Code sections 71110 through 71115, and Government Code section 65040.12, in conjunction with other statutory and regulatory requirements, such as local Air Quality Management District('s) State Implementation Plan, and EPA regulations, require the CEC, as well as other agencies, to infuse **Environmental Justice** into every aspect of decisionmaking. This panoply of statutory authority supplements the general authority to "do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon [a public agency] ..." (Health & Saf. Code § 39600.) Further, the rules, regulations, and standards that the CEC and other agencies adopt must be "consistent with the state goal of providing a

decent home and suitable living environment for every Californian"<sup>2</sup> (*Id.* § 39601(c).)

Therefore any project with potential to affect the environment, and all associated activities constituting the "whole of an action" being carried out by the public agencies involved capable of having an adverse environmental impact (14 Cal. Code Regs. § 15378(a); *see also* Pub. Res. Code § 21065), must be subjected to environmental review pursuant to CEQA to ensure that all the project's adverse, potentially significant impacts on the affected low-income, native-community, and/or community of color, as well as the entire region in which the project is located, are fully and fairly investigated, identified, analyzed, evaluated and, perhaps most importantly of all, **mitigated** -- while also ensuring that project alternatives capable of avoiding or reducing the impacts are considered and, if feasible, adopted.

CARE therefore request, with regard to the issue of project eligibility for funding under RPS and Supplemental Energy Payments (SEPs), that criteria be developed that will preclude discriminatory actions against low-income, native peoples, and peoples of color affected by purported renewable energy projects funded by the CEC. Eligibility criteria must consider issues to protect public health and the environment and to insure environmental justice, free from discrimination as defined by Title VI of the Civil Rights Act, protection of sacred lands, religious freedom, and quality of life for all Californians.

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<sup>2</sup> This overlapping of statutory goals and requirements (*see* Pub. Res. Code § 21000(g), quoted above) is typical among statutory schemes aimed at protecting the public health.

Respectfully submitted,

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